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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT DENIED, IN)
PART, BY KING COUNTY, H. A.)
DABROE,)
H. A. DABROE,)
Appellant,)
v.)
KING COUNTY,)
Respondent,)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and)
SLADE GORTON, ATTORNEY GENERAL,)
Intervenors.)

SHB No. 106

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the request for review of a substantial development permit issued by King County to H. A. Dabroe, came before the Shorelines Hearings Board, Walt Woodward (presiding officer), Mary Ellen McCaffree, Robert F. Hintz, Robert E. Beaty, the designee for the hearing of the

1 Association of Washington Counties, and Arden A. Olson, designee of Bert
2 Cole, at a formal hearing in the King County Courthouse, Seattle,
3 Washington, on April 18, 1974.

4 Appellant was represented by his attorney, Gordon A. Scraggin;
5 respondent, King County, appearing through John E. Keegan, Deputy
6 Prosecuting Attorney and intervenors, Washington State Department of
7 Ecology and Attorney General appearing through Robert V. Jensen,
8 Assistant Attorney General. Eugene Barker, Olympia court reporter,
9 recorded the proceedings.

10 Witnesses were sworn and testified. Exhibits were admitted.
11 Counsel for the parties made closing arguments.

12 The Board having considered the sworn testimony, exhibits, record and
13 files herein, arguments of counsel and exceptions from appellant and
14 respondent and the Board being fully advised in the premises, makes these

15 FINDINGS OF FACT

16 I.

17 In April, 1955, appellant, H. A. Dabroe, purchased Lot 27 within
18 the Vashon Island abandoned military reservation in Section 2, Township 21
19 North, Range 2 E.W.M., together with (qualified) tidelands of the second
20 class in front thereof (Exhibit 11, Deed) in King County, State of
21 Washington. Appellant moved onto Lot 28, then and since owned by him,
22 adjoining Lot 27 on the west thereof, in 1952 when he started a
23 continuing project of construction and improvement of the two said lots
24 which front on the shoreline of Dalco Passage, Commencement Bay, Puget
25 Sound, adjunct to Tahlequah Creek, Vashon Island, within King County,
6 Washington. Appellant's residence is located on the easterly side of
27 Lot 28 and a smaller residential house is located on Lot 27, both

FINAL FINDINGS OF FACT,

S F No 9928-A

CONCLUSIONS OF LAW AND ORDER

1 above high tide line.

2 II.

3 Appellant's described property extends steeply uphill from shoreline
4 northerly to a curving county road running generally west to east
5 along the north lines of Lots 27 and 28 and thence southerly to the
6 shoreline some four hundred feet or so to the east. A sharp curving
7 access road leads into appellant's property from the east off of
8 said county road. Total width of the property involved (east to
9 west) is approximately 258 feet and has a varying depth from the
10 south shoreline to the county road at the north of approximately
11 300 feet. At the time of commencement of appellant's construction
12 and improvement of his property in 1952, and earlier, there existed
13 a marshland on the northeast side of Lot 27 and extending east and
14 over on a portion of the west side of Lot 26, adjacent to the east.
15 At the northerly portion of this marshland a pond, generally referred
16 to as a fish pond, existed for an unknown number of years prior to
17 appellant's improvement projects and was drained by a meandering
18 stream extending southerly over the east side of Lot 27 to the shore,
19 exiting into the Puget Sound waters in a spreading fingers-like pattern
20 to and over a large delta plain of the tideland in front of appellant's
21 property. Prior to appellant's development projects the beach fronting
22 his property was a Class II type sand and gravel beach, the uplands
23 being sand, gravel and clay necessitating a retaining wall (east
24 to west at the north of the buildings on appellant's property and
25 south of the county road) to protect the property from slipping or
6 sliding off the county road onto appellant's property.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 III.

2 Some years prior to appellant's purchase and commencement of
3 improvement of his property in 1952 a breakwater of piling and plank-
4 type bulkhead (breaking the action of waves but allowing water through
5 onto the beach above and back) had been constructed, extending east
6 to west on the shore in front of appellant's Lots 27 and 28 at approxi-
7 mately the level of mean higher high water (11.9', USCGS datum).

8 Between 1955 and the summer of 1973, in a continuing bit by
9 bit process, appellant commenced and completed construction and improve-
10 ment work on his property (Lots 27 and 28) which included the following:

- 11 (1) Construction of a concrete retaining wall
12 (east to west) between the rear of appellant's
13 residence buildings and the county road to
14 the north to prevent slippage from the
15 county road and earth to the north onto his
16 property at the rear of his residence buildings.
- 17 (2) Construction of a solid vertical face 8 feet
18 high, 2 feet wide concrete bulkhead wall extending
19 from west to east along a line some 45 feet
20 seaward of the original wooden breakwater and
21 enclosing a rectangular area in front of Lot 27
22 some 50 feet long with the south seaward wall
23 thereof being at a level some 6 feet lower than
24 the original mean higher highwater line. This
25 rectangular area extending out over the tideland
water on the beach was first intended and used for
a swimming pool and then was eventually filled in
on the landward side thereof bringing the ground
level up to the top of the surrounding bulkhead
walls. This area was then surfaced and intended
for an emergency "heliport" but covered with lawn
planting. Extending some 15 feet seaward from the
south wall of the heliport area two concrete
groin walls (2'x10'x6") have been installed some
25 feet apart.
- (3) Construction of a similar concrete wall extending
from the south end of the east wall of the
heliport area seaward approximately ten feet,
being about eleven feet long, referred to as a wing

1 wall protecting the front or seaward side of a
2 boat ramp. The second similar wing wall was
3 constructed seaward some ten feet plus to the
4 east of the first wing wall and extending
5 northeasterly joining the east wall of said boat
6 ramp structure.

7 (4) Construction of a five foot concrete culvert, confining
8 and carrying the creek water from the above mentioned
9 marshy area and pool area downhill under appellant's
10 boathouse and boat ramp and exiting in a southeasterly
11 direction into the waters of Puget Sound, altering
12 the original flow of the creek and distribution of
13 water and sediment over the delta plain of the
14 tideland in front of appellant's property.

15 (5) Filling in of the aforementioned marshland (partly
16 done by the owner of Lot 26 but assisted by
17 appellant with respect to construction of the
18 culvert and covering thereof) to accomplish, in part,
19 drainage of appellant's property and to assist
20 in control of mosquitoes.

21 IV.

22 All of the construction and improvement work (excluding construction
23 work on appellant's residence on the east side of Lot 28) described in
24 Finding III above, was started and completed by and for appellant
25 without having obtained any permit from King County or any other
26 governmental agency. However, regarding construction that began in 1952
27 or 1955 he did contact the King County Building Department and was told
28 that he did not need a building permit because of the piecemeal nature of
29 the project. While originally the beach fronted by appellant's property
30 was a Class I beach and tideland area (rapidly diminishing from the
31 shorelines of the State of Washington) it was at least a Class II beach
32 prior to the construction and development work done by appellant as
33 hereinabove described and disclosed by the record herein. Appellant's
34 said development of his property has caused the beach in front thereof to

35 FINAL FINDINGS OF FACT,
36 CONCLUSIONS OF LAW AND ORDER

1 deteriorate into a Class III beach by reason of: eliminating the natural
2 backshore area and reducing the natural erosive characteristics of the
3 shoreline site with extensive and substantial landfilling below the high
4 water line; damaging fish (small pink salmon fry and chum), forcing them
5 away from shallow waters adjacent to the beach out and around massive
6 concrete bulkhead walls into deeper water where and while devoured and
7 destroyed or diminished by larger fish predators; adversely affecting the
8 aesthetic qualities of the beach and shoreline fronted by appellant's
9 property by obliteration of the natural features of the original shore-
10 line; substantially precluding or eliminating the public's right of
11 enjoyment and use of the navigable waters fronted by appellant's property
12 while adding to private use of the appellant; materially endangering
3 natural development of the delta plain from the tideland fronted by
14 appellant's property by altering sand and sediment movement as created
15 by the natural action of the waves from the Sound and altering the course
16 of natural drainage from the hillside landward.

17 V.

18 Appellant's fill and bulkheads, seawalls, wingwalls, groins,
19 culvert and diversion of stream drainage of appellant's property, though
20 accomplished on a bit by bit piecemeal basis over a period of
21 approximately twenty years, was an ongoing project constituting a
22 substantial development which is inconsistent with the policy section
23 of the Shoreline Management Act (RCW 90.58.020) and the guidelines of
24 the Department of Ecology.

25 VI.

Although some of the construction and other work listed in

1 Finding III above was undertaken by appellant prior to the effective
2 date of the Shoreline Management Act (June 1, 1971) the same was unlawful
3 because the appellant had not procured permits from King County or the
4 Corps of Army Engineers, therefore, WAC 173-14-050 does not exempt
5 appellant from compliance with the permit requirements of the Shoreline
6 Management Act. Nor has appellant otherwise established any right of
7 exemption from the permit requirements of the Shoreline Management Act.

8 VII.

9 In addition to being unlawful (per Finding VI above) a major
10 proportion of the appellant's development, hereinabove described, was
11 substantially carried forward and completed after December 4, 1969,
12 (date of decision in Wilbur vs. Gallagher, 77 Wn.2d 306), therefore
13 being inconsistent and in violation of the rights of the public. Such
14 development includes the bulkhead seawall on the east, west and
15 southerly sides of the helicopter area, the landfill within the helicopter
16 area and the groins and the wingwalls and posts protecting the boat ramp.

17 VIII.

18 While removal of the "improvements" consisting of the aforementioned
19 bulkhead walls, the helicopter area, seaward of high tide line, including
20 the bulkhead seawalls on the east, west and southerly sides thereof, the
21 groins, and the wingwalls protecting the boat ramp launching structure,
22 might not, alone, restore the beach area and the delta plain seaward
23 thereof, to its original condition prior to such construction and
24 "improvements" of appellant's property, without restoration of the stream
25 from the aforementioned fish pond and marshy area, to the prior condition
of the beach, shoreline, and delta plain area hereinabove described, the

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 continued existence of said concrete bulkheads, heliport area, seawalls,
2 wingwalls, etc., as hereinabove described, together with fill behind the
3 same, will, in terms of long time effects, materially and substantially
4 alter and adversely affect the aquatic and marine life of the tideline
5 area fronted by appellant's property and the use and enjoyment of the
6 public of the (navigable water) displaced by appellant's landfill.

7 IX.

8 Any Conclusion of Law hereinafter recited which should be deemed
9 to be a Finding of Fact is hereby adopted as such.

10 From the foregoing Findings of Fact, the Shorelines Hearings Board
11 arrives at the following

12 CONCLUSIONS OF LAW

13 I.

14 The instant request for review was timely filed and the Shorelines
15 Hearings Board has jurisdiction of this matter.

16 II.

17 The instant substantial development permit is consistent with
18 RCW 90.58.020 and the guidelines of the Department of Ecology particularly
19 with respect to protecting against adverse effects to . . . the waters
20 of the State and their aquatic life, while protecting generally the
21 public's right of the use and enjoyment of the navigable waters displaced
22 by the appellant's property (Lots 27 and 28 as above described) and
23 corollary rights incidental thereto.

24 III.

25 Any Finding of Fact which should be deemed a Conclusion of Law is
hereby adopted as such.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 From these Conclusions, the Shorelines Hearings Board makes the
2 following

3 ORDER

4 The substantial development permit granted by King County for
5 improvement of appellant's property and beach development is sustained
6 and the appellant's appeal therefrom, by way of request for review, is
7 hereby dismissed and this matter is remanded to King County with
8 directions to proceed with enforcement of abatement and removal of that
9 part of appellant's construction and improvements and development projects
10 placed below the line of ordinary high water of Puget Sound subsequent
11 to December 4, 1969 and those projects placed on the uplands subsequent to
12 June 1, 1971.

3 DONE at Lacey, Washington, this 25th day of June, 1974.

14 SHORELINES HEARINGS BOARD

15 Walt Woodward
16 WALT WOODWARD, Chairman

17 Arden A. Olson
18 ARDEN A. OLSON, Member

19 Robert E. Beaty
20 ROBERT E. BEATY, Member

21 Robert F. Hintz
22 ROBERT F. HINTZ, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

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of the
V. J. J. J. J.
J. J. J.*

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
THE CITY OF PORT ANGELES TO)
THE PORT OF PORT ANGELES)

ALICE P. BALL,

Appellant,

vs.

CITY OF PORT ANGELES and)
THE PORT OF PORT ANGELES,)

Respondents.)

SHB No. 107

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the request for review of a substantial development permit issued by the City of Port Angeles to the Port of Port Angeles, came before the Shorelines Hearings Board (Walt Woodward, presiding officer) in the Commissioners' Meeting Room, Clallam County Courthouse, Port Angeles, Washington, at 10:00 a.m., March 1, 1974.

Appellant appeared pro se; Port of Port Angeles through Tyler Moffett, and the City of Port Angeles made no appearance. Richard

Reinertsen, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

Appellant and counsel made closing arguments.

From testimony heard, exhibits examined, arguments considered, transcript reviewed and exceptions denied, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I.

On July 30, 1973, the Port of Port Angeles applied for a substantial development permit under chapter 90.58 RCW, from the City of Port Angeles for dredging, bulkheading and filling for ship moorage at the Port's Terminal No. 1, in Port Angeles Bay, Washington. After due public notice and at a public hearing, the City Council of the City of Port Angeles approved the permit on September 18, 1973. On October 15, 1973, appellant filed a request for review of the permit with the Board and on November 9, 1973, both the Attorney General and the Department of Ecology certified the request for review as reasonable.

II.

By stipulation of appellant and the Port of Port Angeles, the shorelines of Port Angeles Harbor are of state-wide significance.

III.

Appellant failed to prove that the permit is inconsistent with chapter 90.58 RCW or WAC 173-16. As of September 18, 1973, there was not in existence any discernible or ascertainable master program of the City of Port Angeles.

IV.

The City Council of the City of Port Angeles, in granting the
FINAL FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

1 permit failed to consider environmental factors of the proposed project
2 as required by chapter 43.21C RCW, did not submit a finding of no
3 significant environmental impact and did not prepare or consider an
4 environmental impact statement.

5 V.

6 An Conclusion of Law hereinafter recited which should be deemed a
7 Finding of Fact is hereby adopted as such.

8 From these Findings, the Shorelines Hearings Board comes to these

9 CONCLUSIONS OF LAW

10 I.

11 The Shorelines Hearings Board has jurisdiction under chapter
12 90.58 RCW to review the permit and asserts jurisdiction to consider
13 environmental aspects as specified in chapter 43.21C RCW.

14 II.

15 Uncontroverted testimony convinces this Board that the City Council
16 of the City of Port Angeles granted the permit with total disregard for
17 environmental factors and that this disregard is a violation of chapter
18 43.21C RCW, thus making the permit null and void.

19 III.

20 Any Finding of Fact which should be deemed a Conclusion of Law is
21 hereby adopted as such.

22 Therefore, the Shorelines Hearings Board issues this

23 ORDER

24 The substantial development permit issued by the City of Port
25 Angeles on September 18, 1973 to the Port of Port Angeles is hereby
26 vacated without prejudice.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

DONE at Lacey, Washington this 28th day of May, 1974.

SHORELINES HEARINGS BOARD

Walt Woodward

WALT WOODWARD, Chairman

W. A. Gissberg

W. A. GISSBERG, Member

Mary Ellen McCaffree

MARY ELLEN McCAFFREE, Member

Robert F. Hintz

ROBERT F. HINTZ, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

1 IN THE MATTER OF A SUBSTANTIAL)
2 DEVELOPMENT PERMIT ISSUED BY)
3 SNOHOMISH COUNTY TO EDWARD W. HAYES)
4)
5 GEORGE YOUNT and STATE OF)
6 WASHINGTON, DEPARTMENT OF ECOLOGY)
7 and SLADE GORTON, ATTORNEY GENERAL,)
8)
9 Appellants,)
10 vs.)
11)
12 SNOHOMISH COUNTY and EDWARD W. HAYES,)
13)
14 Respondents.)
15)
16)
17)
18)

SHB Nos. 108 and 112

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

10 THESE MATTERS being consolidated requests for review to the issuance
11 of a conditional shoreline management substantial development permit;
12 having come on regularly for hearing before the Shorelines Hearings Board
13 on the 6, 7 and 8th days of March, 1974, at Everett, Washington; and
14 appellant, Washington State Department of Ecology and Attorney General,
15 appearing through its attorney, Thomas C. Evans, Assistant Attorney General
16 appellant, George Yount, appearing through his attorney, J. Grahame Bell;
17 respondent, Snohomish County, appearing through Darrell Syferd, Deputy
18 Prosecuting Attorney; and respondent, Edward W. Hayes, appearing through

1 his attorney, Bill Baker; and Board members present at the hearing
2 being W. A. Gissberg (presiding), Mary Ellen McCaffree, Arden A. Olson
3 and Robert F. Hintz; and the Board having considered the sworn testimony,
4 exhibits, post-hearing arguments, records and files herein and having
5 entered on the 24th day of April, 1974, its proposed Findings of Fact,
6 Conclusions of Law and Order, and the Board having served said proposed
7 Findings, Conclusions and Order upon all parties herein by certified
8 mail, return receipt requested and twenty days having elapsed from said
9 service; and

10 The Board having received no exceptions to said proposed Findings,
11 Conclusions and Order; and the Board being fully advised in the premises;
12 now therefore,

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
14 Findings of Fact, Conclusions of Law and Order, dated the 24th day of
15 April, 1974, and incorporated by this reference herein and attached
16 hereto as Exhibit A, are adopted and hereby entered as the Board's
17 Final Findings of Fact, Conclusions of Law and Order herein.

18 DONE at Lacey, Washington, this 22nd day of May, 1974.

19 SHORELINES HEARINGS BOARD

20
21 Mary Ellen McCaffree
MARY ELLEN McCAFFREE, Member

22 Arden A. Olson
23 ARDEN A. OLSON, Member

24 Robert F. Hintz
25 ROBERT F. HINTZ, Member

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

W. A. Gissberg
W. A. GISSBERG, Member

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

1 IN THE MATTER OF A SUBSTANTIAL)
2 DEVELOPMENT PERMIT ISSUED BY)
3 SNOHOMISH COUNTY TO EDWARD W. HAYES)

4 GEORGE YOUNT and STATE OF)
5 WASHINGTON, DEPARTMENT OF ECOLOGY)
6 and SLADE GORTON, ATTORNEY GENERAL,)

Appellants,)

vs.)

7 SNOHOMISH COUNTY and EDWARD W. HAYES,)

Respondents.)

SHB Nos. 108 and 112

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

9
10 A hearing on the consolidated above-numbered requests for review
11 to the issuance of a conditional shoreline management substantial
12 development permit was held in Everett, Washington on March 6, 7 and 8,
13 1974 before Board members, W. A. Gissberg (presiding), Mary Ellen
14 McCaffree, Arden A. Olson and Robert F. Hintz.

15 Appellants Washington State Department of Ecology and Attorney
16 General appeared through Thomas C. Evans, Assistant Attorney General;
17 appellant George Yount appeared through his attorney, J. Grahame Bell;
18 Respondent Snohomish County appeared through Darrell Syferd, Deputy

EXHIBIT A

1 Prosecuting Attorney; respondent Edward W. Hayes appeared through h
2 attorney Bill Baker.

3 Having heard the testimony and considered the exhibits and post-
4 hearing arguments, and being fully advised, the Board makes and enters
5 these

6 FINDINGS OF FACT

7 I.

8 That any Conclusion of Law hereinafter recited which should be
9 deemed a Finding of Fact is hereby adopted as such.

10 II.

11 Edward W. Hayes and others own a combined unimproved land area
12 (site) of 93 acres. On March 10, 1970 he applied for a permit
13 under RCW 86.16 (flood control zones) to construct and maintain
14 a "sanitary landfill" on the site. Shortly thereafter he was granted
15 a flood control permit to construct and maintain a "solid waste
16 disposal site" (App. Ex. 70). At least since then he has utilized a
17 portion of the site for that purpose and has now filled ten acres to
18 a nine foot elevation, using approximately 100,000 yards of solid
19 waste in the process. Apparently only nonputrescible wastes have been
20 placed upon the site and much of it consists of discarded wood products
21 and debris resulting from construction demolition. That portion of the
22 site east of Interstate Highway 5 used as a disposal area is an eyesore
23 and can best be described in its present condition as having been
24 esthetically molested.

25 III.

26 The site is located in Snohomish County between the northerly

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW

city limits of Everett and the southerly city limits of Marysville; its northerly boundary is Ebey Slough; its southerly boundary is Steamboat Slough; its westerly boundary is the Tulalip Indian Reservation. The site is bisected by Interstate Highway 5, old Highway 99 and railroad trackage and right of way, all of which were respectively constructed on elevated fill. The materials for the freeway construction were obtained from a borrow pit which was located on that portion of the site westerly of I-5.

Dikes were constructed around three sides of the property at about 1891 to protect the site and other property from water inundation by tide and the waters of Ebey and Steamboat Sloughs. The site was farmed until around 1959 at which time a break in the Ebey Slough dike occurred. Since then a portion of the site is covered daily by the tide water flowing through the breaks in the dike. That flow of salt water has scoured a channel from Ebey Slough into the portion of the site lying easterly of I-5.

IV.

Ebey and Steamboat Sloughs are portions of the Snohomish River, tributary to Puget Sound, and are shorelines of state-wide significance. According to the 1966 study of the Corp of Army Engineers, the site is within the 50 year flood plain. A more recent study by the Corps, the results of which are only tentative and subject to revision, leads to a finding that the site is not within the flood plain but that it is subject only to tidal flooding. At any event, the flood water storage of the site is insignificant and the filling of the site would not significantly affect the flood plain water storage

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 capacity because the site is such a small part of the Snohomish River
2 flood plain. .

3 V.

4 Respondent applied for a substantial development permit on
5 March 26, 1973. Simultaneously he filed his "environmental impact
6 statement" (App. Ex. 55). His shoreline management application sought
7 a permit for a solid waste landfill and "continue to expand trans-
8 shipping capabilities and heavy industrial use." His publication
9 of the notice of hearing on the application stated the proposed
10 development to be a "marine industrial area". The "final environmental
11 impact statement" (App. Ex. 57) describes the proposed permit to be
12 for "landfilling, channel extension, two docks, dredging, a future
13 railroad spur and construction of a steel fabrication facility". A
14 site plan and vicinity map was included in the material filed by
15 respondent with his application.

16 VI.

17 The county commissioners, after a public hearing, approved a
18 shoreline management substantial development permit "for operation of
19 a solid waste landfill and marine industrial area", with the condition
20 that "only nonputrescible wastes. . . be allowed" in the landfill.
21 That condition was not expressed upon the face of the permit but is
22 found in the resolution approving the granting of the application for
23 a permit. The planning staff and commission had recommended disapproval
24 of the application, but their findings and recommendations were
25 considered and rejected by the county commissioners.

26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

VII.

2 The site has been zoned heavy industrial since 1962. Immediately
3 north and across Ebey Slough from the site there are three lumber
4 mills and a boat marina and other highly urbanized facilities. A
5 large area westerly of the site is now being used as a solid waste
6 sanitary landfill in which Seattle's garbage is being dumped. Easterly
7 of the site and within the planning jurisdiction of Snohomish County,
8 there is no other land in the Snohomish River estuary which has been
9 zoned heavy industrial.

VIII.

11 A solid waste landfill containing only nonputrescible wastes can
12 cause leachates. The subsoil of the site is relatively impermeable, thus
13 causing any leachates to move horizontally. There is no evidence that
14 leachates from this site would have a deleterious effect on the adjacent
15 waters.

IX.

17 Studies and projections by experts prove only that there is a
18 divergence of opinion as to the need for additional industrial sites.

X.

20 The hundreds of acres of land in the estuary of the Snohomish River
21 constitutes a fragile ecosystem. About one-half; i.e., 46 acres, of the
22 site is a salt water marsh habitat. The dike contains a muskrat habitat.
23 Although a filling of the site would mean a loss of a portion of the
24 total estuary, the ecological or environmental impact of a fill would be
25 insignificant. However, the cumulative effect of other such developments
26 would cause irreversible damage to the ecosystem of the estuary at some

27 FINDINGS OF FACT
CONCLUSIONS OF :

AND ORDER

1 unknown and unpredictable stage of development.

2 Wolf Bauer, recognized as an expert naturalist, engineer and
3 geologist found that the area of the site which is located westerly of
4 I-5 would be acceptable for a fill and industrial area, because that
5 area has lost its appeal "environmentally." However, his opinion was
6 that the 57 acres easterly of I-5 was beyond a natural planning
7 boundary upon which further encroachment of the natural estuary conditio
8 of the Snohomish River should not be allowed.

9 XI.

10 The site is not economically suitable for agricultural purposes and
11 such a land use is not a viable option. The development plan proposed
12 for the site does provide for the retention of the natural esthetic
13 qualities of the existing dikes, but that proposal, although salutary,
14 has not been made a condition of the permit.

15 XII.

16 The environmental impact statement does not consider the
17 availability of alternate marine industrial sites.

18 XIII.

19 The substantial development permit was granted on September 10,
20 1973. As of that date, there had been no adoption of goals and
21 policies or other elements of the master programs either by the Planning
22 Commission or the County Commissioners of Snohomish County for the
23 shorelines therein. Thus, there was no ascertainable or recognizable
24 master program as of the date of the issuance of the permit.

25
26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

CONCLUSIONS OF LAW

I.

Any Finding of Fact, which should be deemed a Conclusion of Law is hereby adopted as such.

II.

The dispositive guideline in this case is that of the Department of Ecology found at WAC 173-16-060(14)(c). It provides:

"... (c) Fill materials should be of such quality that it will not cause problems of water quality. Shoreline areas are not to be considered for sanitary landfills or the disposal of solid waste." (emphasis supplies)

RCW 70.95.030(9) provides:

"'Solid waste' means all putrescible and nonputrescible solid and semisolid wastes including . . . industrial wastes, . . . demolition and construction wastes, . . . and discarded commodities."

We interpret the above guideline to mean and hold that it mandatorily prohibits the disposal of solid wastes within the shoreline areas.

III.

Not every landfill is prohibited by the guidelines, however. WAC 173-16-060(14) provides for and permits the approval of certain landfills which are of the type, location, design and effect therein described. We are concerned about establishing a precedent of allowing fills in that portion of the Snohomish River estuary which is within the planning jurisdiction of Snohomish County and at those places which would be an invasion of that part of the estuary easterly of I-5. However, the Order to be entered in this cause will not be precedence setting because

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 respondent's filling activity had lawfully commenced prior to the
2 effective date of the Shoreline Management Act and had been lawfully
3 continued for two years thereafter. The public generally, and respondent
4 specifically, is faced with a situation where, if a permit be not granted
5 the site will continue to be an eyesore. However, the granting of a
6 permit for a fill on a portion of the site, but not using solid waste
7 as a fill material, would be in the public interest and consistent with
8 the policy section of the Shoreline Management Act and the guidelines
9 if designed and constructed in accordance with WAC 173-16-060(14). In
10 the ultimate development of a portion of the site, when filled, priority
11 should be for a water-dependent use.

12 IV.

13 RCW 90.58.020 states that "industrial and commercial developments
14 which are particularly dependent on their location on or use of the
15 shorelines of the state" shall be given priority in those limited
16 instances where "alterations of the natural conditions of the shorelines
17 of the state" is allowed. Because the subject permit is too vague to
18 ascertain, with the certainty required by this Board, what it authorizes,
19 we are unable to determine the issues of this case relating to water-
20 dependency. It is our view that a water-dependent commerce or industry,
21 to which priority should be given, is one which cannot exist in any
22 other location and is dependent on the water by reason of the intrinsic
23 nature of its operations. A water-related industry or commerce is one
24 which is not intrinsically dependent on a waterfront location but whose
25 operation cannot occur economically without a shoreline location.

26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

V.

2 If local government issues a permit upon certain conditions, those
3 conditions should appear on the permit itself or by reference stated
4 therein and with the reference attached thereto. The failure of
5 Snohomish County to issue permits in that form can only lead to further
6 controversy and uncertainty not only to the public but to the permittee
7 as well. The Board makes the same criticism of the subject matter of
8 the permit. We are urged to find that the purpose and scope of the
9 permit is to be found in the environmental impact statement. We refuse
10 to do so. The permit itself should describe with particularity and
11 certainty what is being authorized. The description on the subject
12 permit as a "marine industrial area" does not meet our test when no
13 further explanatory material is attached to or expressly made a part
14 of the permit.

15 VI.

16 Our review of the question of whether the permit is consistent with
17 the master program "so far as can be ascertained" (RCW 90.58.140
18 (a)(iii)) is necessarily limited to the status of the master program as
19 of the date of the issuance of the permit by the local government. At
20 that time Snohomish County's master program was not ascertainable.

21 VII.

22 The specific permit which is the subject matter of this review
23 should be vacated, but a permit should be granted in accordance with
24 the principles set forth herein.

25 ORDER

26 The permit is vacated and the matter is remanded to Snohomish

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 County for its reconsideration of the issuance of a permit which is
2 in accordance with these Findings and Order and which is limited in
3 area to only that part of the site which would cover over the existing
4 solid waste landfill located easterly of I-5.

5 DATED this 24th day of April, 1974.

6 SHORELINES HEARINGS BOARD

7
8 Mary Ellen McCaffree
MARY ELLEN McCAFFREE, Member

9
10 Arden A. Olson
ARDEN A. OLSON, Member

11
12 Robert F. Hintz
13 ROBERT F. HINTZ, Member

14
15 Having personally written the Findings of Fact and Conclusions
16 of Law, I agree and concur with them. I also concur with the Order,
17 as far as it goes. However, I would allow respondent to also fill
18 that area westerly of I-5.

19
20 W. A. Gissberg
21 W. A. GISSBERG, Member

22
23
24
25
26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER